37489-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

82619-6

In Re Personal Restraint Petition of:

SHAWN FRANCIS,

Petitioner.

PERSONAL RESTRAINT PETITION AND OPENING BRIEF

PIERCE COUNTY SUPERIOR COURT NO. 95-1-05023-1

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A. STATUS OF PETITIONER

Petitioner Shawn Francis is currently serving a sentence of 347 months confinement in the custody of the Washington Department of Corrections after pleading guilty to one count of murder in the first degree (felony murder), one count of assault in the second degree, and one count of attempted robbery in the first degree, all under Pierce County Superior Court case number 95-1-05023-1. *See* Exhibit A (*Statement of Defendant on Plea of Guilty*); Exhibit B (*Judgment and Sentence*). The three charges arose from a single incident which occurred on November 4, 1995. Mr. Francis had just turned 18 years old at the time of the offense.

Mr. Francis did not appeal the judgment and sentence. Nor has he filed any previous Personal Restraint Petition

challenging the convictions in this case.

Mr. Francis has been in custody on this matter for over 12 years. His projected release date is January 7, 2021. He now seeks relief from this confinement.

B. GROUNDS FOR RELIEF

Mr. Francis's restraint is unlawful because his judgment violates the Constitutions of the United States and of the State of Washington. RAP 16.4(c)(2). More specifically, the convictions and sentences on counts II (second degree assault) and III (attempted first degree robbery) violate the constitutional protection against double jeopardy guaranteed by both the Fifth Amendment to the United States Constitution and by Article One, § 9 of the Washington Constitution.

Because Mr. Francis's petition is based solely on a double jeopardy claim, this petition is exempt from the one year

time bar set forth in RCW 10.73.090. *See* RCW 10.73.100(3).

C. STATEMENT OF THE CASE

The State's *Supplemental Declaration for Determination of Probable Cause* summarized the facts of the offense as follows:

> [I]n Pierce County, Washington, on or about the 4th day of November, 1995, the defendant, Sean [sic] Francis, did have knowledge that Jason Lucas and D'Ann Jacobsen had $2,000. Francis laid in wait in the dark with Quinn Laford Spaulding at [Lucas's] residence at 407 Valley Avenue, Apt. M107, Puyallup. When Jason and Jacobsen returned, Francis and Spaulding attacked them with baseball bats. Francis had intended to knock Lucas out and take the money. When [Francis and Spaulding] failed to render Lucas unconscious, [Lucas] was repeatedly struck. Lucas was taken to the intensive care unit at Mary Bridge Hospital and placed on life support. He was brain dead and not expected to live. Jacobsen received numerous bruises to the face, head, arms and hands. The suspects fled [without gaining control of the money] when a witness appeared. Francis admitted to police that he and [Spaulding] assaulted Lucas and Jacobsen. Jacobsen told police that the suspects [were]

wearing ski masks at the time of the assault.

> Jason Lucas died on November 8, 1995, as a result of injuries received in the assault. Later that day, police questioned Quinn Spaulding[,] who told them that Francis contacted him on the 4th and said that he wanted to go to Puyallup and take Lucas's money away from him. Quinn told Francis that he wanted to go with him, and Francis drove them to the apartment complex where they waited for Lucas and Jacobsen to return home for a long time. While driving, [Shawn] said he was just going to hit [Lucas] in the head, grab the money, and they were going to bail. They hid in some bushes until Lucas and Jacobsen arrived. Quinn saw Francis leave the bushes with a bat and his ski mask down. Quinn also claimed that he was still hiding in the bushes when the assault took place. Quinn left the bushes, observed [Shawn] strike Jason, nudged [Shawn] to tell him to go, and fled with [Shawn] following.
>
> [Shawn] Francis is 5'9" tall and weighs 145 pounds. Quinn Spaulding is shorter and heavier set. D'Ann Jacobsen told police that both of the suspects had baseball bats. Jacobsen also said the person that hit her was probably around 5'8", and the one that hit Jason was probably a little bit smaller.

See Exhibit C.

On November 13, 1995, Francis and Spaulding were charged by information with one count of felony murder in the first degree for causing the death of Jason Lucas (with the commission or attempted commission of robbery in the first degree as the predicate felony), one count of attempted robbery in the first degree against Jason Lucas, and one count of attempted robbery in the first degree against D'Ann Jacobsen. Francis was additionally charged with one count of assault in the first degree against D'Ann Jacobsen.

On April 10, 1996, Quinn Spaulding pled guilty to an amended charge of rendering criminal assistance in the first degree, a class C felony. He was sentenced immediately upon entering his guilty plea, and for his role in the Lucas homicide he received six months in jail with credit for time served. He was released that day.

Shawn Francis, meanwhile, received altogether different treatment from the State and the trial court. On the same day that Spaulding cut the deal which resulted in his immediate release, Francis pled guilty to a second amended information charging one count of felony murder in the first degree for causing the death of Jason Lucas (with the commission or attempted commission of robbery in the first degree as the predicate felony), one count of assault in the second degree against D'Ann Jacobsen (count II), and one count of attempted robbery in the first degree against D'Ann Jacobsen (count III). *See* Exhibit A; Exhibit D (*Second Amended Information and Prosecutor's Statement Re: Second Amended Information*).

In his plea statement, Francis admitted the following conduct:

> In Pierce County WA on Nov. 4, 1995 I struck Jason Lucas with a bat while attempting to rob Jason. When he didn't fall down, I struck him again. D'Ann Jacobsen was with him and when she screamed I swung the bat at her and hit her causing her substantial injury. I acknowledge my actions constitute a substantial step toward robbing her and Jason. Quinn Spaulding convinced me to drive him out to Jason's so that he could rob him of the money Jason and D'Ann had recently gotten from her parents. When Jason came home, Quinn threatened to kill me if I didn't attack Jason. I know that Jason died as a result of my striking him. I am very sorry for what I did and wish I would have confronted Quinn instead.

Exhibit A, at 4.

On May 30, 1996, the trial court sentenced Shawn Francis to 347 months in prison on the murder charge, 14 months in prison on the second degree assault charge, and 40.5 months in prison on the attempted first degree robbery charge, and ordered that the three sentences run concurrently.

D. SUMMARY OF ARGUMENT

In a single senseless, tragic episode, Shawn Francis and Quinn Spaulding attacked Jason Lucas and D'Ann Jacobsen with the intent to rob them of $2,000. Francis and Spaulding never did obtain any money, but Jason Lucas died as a result of injuries sustained during the attempted robbery. Although Shawn Francis did not intend to kill Jason Lucas, his commission of the attempted first degree robbery, combined with Lucas's death, constituted the crime of felony murder in the first degree.

Based on this single criminal episode, Shawn Francis pled guilty to and was punished for two other felonies in addition to the crime of first degree felony murder. As discussed in detail below, those two convictions—for second degree assault and

attempted first degree robbery—violate state and federal constitutional protections against double jeopardy and cannot stand. Specifically, the crime of second degree assault against D'Ann Jacobsen (count II) constitutes the same offense for double jeopardy purposes as attempted first degree robbery (count III). *See State v. Freeman*, 153 Wn.2d 765, 108 P.3d 753 (2005). In addition, although both Lucas and Jacobsen were attacked during the incident, under well-established double jeopardy jurisprudence only a single attempted robbery occurred. *See State v. Tvedt,* 153 Wn.2d 705, 107 P.3d 728 (2005). Finally, because that single attempted robbery was also an element of the crime of first degree felony murder, count III merges with count I and cannot be punished separately. *See State v. Womac*, 160 Wn.2d 643, 160 P.3d 40 (2007).

Mr. Francis is entitled to relief from the judgment entered in this case. This Court should vacate the entire plea agreement and remand for further proceedings. Alternatively, the Court should vacate the convictions in counts II and III and remand for resentencing on count I.

E. ARGUMENT

1. Introduction: The Constitutional Prohibition Against Multiple Punishments for the Same Offense.

The double jeopardy clause of the Fifth Amendment to the United States Constitution guarantees that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Similarly, Article One, Section 9 of the Washington Constitution states: "No person shall . . . be twice put in jeopardy for the same offense." These federal and state

provisions afford parallel protection against the "prosecution oppression" which arises from multiple punishments. *Womac*, 160 Wn.2d at 650.

> The federal and state double jeopardy clauses prohibit:
>
> (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense imposed in the same proceeding.

Womac, 160 Wn.2d at 650-51, quoting *In Re Percer*, 150 Wn.2d 41, 48-49, 75 P.3d 488 (2003). It is the third of these prohibitions—the rule that protects all of us from the imposition of multiple punishments for the same offense—which is implicated in Mr. Francis's case.

This protection against multiple punishments is of equal vitality whether the accused is convicted after a trial or pleads guilty. While a guilty plea involves the forfeiture of a number

of important constitutional rights, it does not entail a waiver of an individual's protection against double jeopardy. *State v. Knight*, ___ Wn.2d ___, 174 P.3d 1167, 1170 (2008), citing *Blackledge v. Perry*, 417 U.S. 21, 30, 94 S.Ct. 2098, 40 L.Ed.2d 628 (1974) and *Menna v. New York*, 423 U.S. 61, 62, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975) (per curiam). It is also of no consequence if the sentences for the offending charges are imposed concurrently. Because a conviction itself "constitutes punishment"—"even without imposition of sentence"—"convictions *may not stand* for all offenses where double jeopardy protections are violated." *Womac*, 160 Wn.2d at 657-58 (emphasis in original), quoting *State v. Calle*, 125 Wn.2d 769, 777 n.3, 888 P.2d 155 (1995).

In analyzing a potential "multiple punishment" double

jeopardy violation, a reviewing court's overarching goal is to determine whether the legislature intended to prescribe separate punishments for the offenses at issue. *State v. Freeman*, 153 Wn.2d 765, 770-72, 108 P.3d 753 (2005). To make this determination, our state Supreme Court examines a set of four factors in the context of both the charged criminal statutes and the specific facts underlying those charges.

First, the Court "consider[s] any express or implicit legislative intent." *Freeman*, 153 Wn.2d at 771-72. One example of explicit legislative intent is found in the "anti-merger" statute, which permits the State to prosecute a defendant for burglary *and* for the underlying crime the alleged burglar intended to commit. *See* RCW 9A.52.050; *Freeman*, 153 Wn.2d at 772.

Second, in the absence of clear legislative intent regarding the imposition of multiple punishments, the Court will look to the *Blockburger* test, also called the "same evidence" or "same elements" test. *Freeman*, 153 Wn.2d at 772, citing *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (1932). The rule, put simply, states:

> [W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

In Re Orange, 152 Wn.2d 795, 817, 100 P.3d 291 (2005), quoting *Blockburger*, 284 U.S. at 304. "If each crime contains an element that the other does not, [the Court] presume[s] that the crimes are not the same for double jeopardy purposes." *Freeman*, 153 Wn.2d at 772. The Court must "consider the

elements of the crimes *as charged and proved*, not merely as the level of an abstract articulation of the elements." *Freeman*, 153 Wn.2d at 777 (emphasis supplied).

It is important to note, however, that the *Blockburger* test creates only a rebuttable presumption; punishment for two offenses may still violate double jeopardy even if those offenses fail the "same elements" test. *Freeman*, 153 Wn.2d at 776-80 (holding that first degree robbery and second degree assault are generally the same offense for double jeopardy purposes even though they fail the "same elements" test) ; *Womac*, 160 Wn.2d at 652 (double jeopardy may be violated "*despite* a determination that the offenses involved clearly contained different legal elements") (emphasis in original).

A third tool for determining whether multiple

punishments violate double jeopardy is application of the "merger doctrine."

> Under the merger doctrine, when the degree of one offense is raised by conduct separately criminalized by the legislature, we presume the legislature intended to punish both offenses through a greater sentence for the greater crime.

Freeman, 153 Wn.2d at 772-73.

Fourth and finally, crimes which appear to be the same offense for double jeopardy purposes may nevertheless be punished separately "if there is an independent purpose or effect" to each crime. *Freeman*, 153 Wn.2d at 773.

If the Court determines that double jeopardy has been violated, the proper remedy is to vacate "the conviction for the crime that forms part of the proof of the other. This is because the greater offense typically carries a penalty that incorporates

punishment for the lesser included offense." *Freeman*, 153 Wn.2d at 775 (quotations and citations omitted).

2. <u>As Charged in This Case, Second Degree Assault and Attempted First Degree Robbery Constitute the Same Offense for Double Jeopardy Purposes. The Conviction for the Lesser Crime—Second Degree Assault—Must Be Vacated.</u>

In *Freeman* and its companion case, *State v. Zumwalt,* the Washington Supreme Court engaged in an exhaustive analysis of the double jeopardy implications which arise from simultaneous convictions for robbery and assault. Zumwalt's case is of particular relevance to Mr. Francis because it involved charges of robbery in the first degree and assault in the second degree. Zumwalt had arranged to meet with the victim in the parking lot of a casino in Richland, ostensibly to sell drugs to her. Once there, however, Zumwalt punched the victim in the

face, knocking her to the ground and fracturing her eye socket. He then robbed her of cash and casino chips. *Freeman*, 153 Wn.2d at 770.

In analyzing the four factors discussed above, the Court first discussed robbery in the first degree and assault generally (without regard to degree), and noted that the statutes defining these crimes "do not explicitly authorize separate punishments." *Freeman*, 153 Wn.2d at 773. The Court went on to observe:

> [S]ince 1975, courts have generally held that convictions for assault and robbery stemming from a single violent act are the same for double jeopardy purposes and that the conviction for assault must be vacated at sentencing. . . Vacation of the assault charge is so ubiquitous that the model form in Washington Practice for a motion to merge counts at sentencing lists assault and robbery in the text of the model form. . . When an assault elevates the degree of robbery, courts have regularly concluded that the two offenses are the same for double jeopardy purposes.

Freeman, 153 Wn.2d at 774. Ultimately, the Court decided that

while there is evidence of legislative intent to punish first degree assault separately from an accompanying robbery, there is "no evidence that the legislature intended to punish second degree assault separately from first degree robbery when the assault facilitates the robbery." *Freeman*, 153 Wn.2d at 776.

The *Freeman* court did not dwell on the *Blockburger* test, merely noting that the parties agreed that assault and robbery do not satisfy the "same elements" test. However, as discussed above, the Court pointed out that "*Blockburger* is not dispositive of the question whether two offenses are the same." *Freeman*, 153 Wn.2d at 777, quoting *Percer*, 150 Wn.2d at 50-51.

Next the Court turned to the issue of merger, and observed:

> In both [Freeman and Zumwalt's] cases, to prove first degree robbery as charged and proved by the State, the

> State had to prove the defendants committed an assault in furtherance of the robbery. . . Under the merger rule, *assault committed in furtherance of a robbery merges with robbery* and without contrary legislative intent or application of an exception, these crimes would merge. . . *[W]e conclude the merger doctrine applies to merge Zumwalt's first degree robbery and second degree assault convictions.*

Freeman, 153 Wn.2d at 778 (emphasis supplied).

But the finding that Zumwalt's assault and robbery convictions merged did not end the Court's inquiry. Lastly, the Court asked whether, despite the merger finding,

> there is a separate injury to the person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms an element.

Freeman, 153 Wn.2d at 778 (quotations omitted). In analyzing this exception to the merger rule, the Court emphasized:

> [T]his exception does not apply merely because the defendant used *more* violence than necessary to

> accomplish the crime. The test is not whether the defendant used the least amount of force to accomplish the crime. The test is whether the unnecessary force had a purpose or effect independent of the crime.

Freeman, 153 Wn.2d at 779 (emphasis in original). Concluding that Zumwalt's second degree assault on the victim was incidental to the robbery in the first degree, the Court held that Zumwalt's convictions for both crimes violated double jeopardy, and remanded the case for resentencing. *Freeman*, 153 Wn.2d at 779-80.

The reasoning and conclusions of the *Freeman* Court control the outcome in Mr. Francis's case. The attempted first degree robbery charged in count III accused Francis of taking a substantial step towards stealing from D'Ann Jacobsen, and in the process "inflict[ing] bodily injury upon D'Ann Jacobsen." He accomplished this by assaulting her "with a deadly weapon,

to wit: a baseball ball," as charged in count II. Exhibit D, at 2-3. Francis acknowledged the interdependence between the assault and the attempted robbery in his guilty plea form by stating:

> D'Ann Jacobsen was with [Jason Lucas] and when she screamed I swung the bat at her and hit her causing her substantial injury. I acknowledge my actions constitute a substantial step toward robbing her and Jason.

Exhibit A, at 4. In other words, the assault on D'Ann Jacobsen, as horrifying as it was, was part and parcel of the attempted robbery charged in count III.

This inescapable fact is further underscored by the trial court's own factual finding that counts II and III constituted the "same criminal conduct" for sentencing purposes under the Sentencing Reform Act (SRA). Exhibit B, at 2. This finding required the trial court to conclude that counts II and III involved the same victim, occurred at the same time and place,

and involved the same criminal intent. RCW 9.94A.589(1)(a) (formerly RCW 9.94A.400(1)(a)). Under the SRA, "same criminal intent" "can be measured by determining whether one crime furthered the other." *In re Connick*, 144 Wn.2d 442, 465, 28 P.3d 729 (2001).

In *Freeman*, the Washington Supreme Court held that the crimes of first degree robbery and second degree assault are generally "the same for double jeopardy purposes," "*unless* they have an independent purpose or effect." *Freeman*, 153 Wn.2d at 780 (emphasis supplied). In this case, the crimes charged in counts II and III had no independent purpose or effect. Rather, the assault charged in count II furthered the attempted robbery charged in count III. This case falls squarely within the holding of *Freeman*. The lesser conviction—second degree assault—

violates double jeopardy and cannot stand.

3. Because the Attempted Robbery Charged in Count III Was the Predicate Felony for the Charge of Felony Murder in the First Degree, the Conviction on Count III Violates Double Jeopardy and Must Be Vacated.

It is axiomatic that commission of the predicate crime is an element of the crime of felony murder. When a defendant proceeds to trial on a charge of felony murder, the jury must be instructed on—and unanimously find beyond a reasonable doubt—each and every element of the predicate offense in order to convict. *State v. Hartz*, 65 Wn. App. 351, 354 & n.2, 828 P.2d 618 (1992).

From this indisputable premise, it necessarily follows that first degree felony murder as charged in this case, and its predicate crime of attempted first degree robbery, are the same

offenses for double jeopardy purposes. In every case charging felony murder, each element of the predicate crime must be established in order to prove the commission of felony murder, thereby satisfying the *Blockburger* or "same elements" test discussed above.

Application of the merger doctrine to Mr. Francis's case yields a similar result—the unintentional killing of Jason Lucas was elevated to the crime of murder in the first degree by the accompanying attempted commission of robbery in the first degree. *See State v. Williams*, 131 Wn. App. 488, 497-500, 128 P.3d 98, *remanded on other grounds*, 158 Wn. 2d 1006 (2006) (attempted first degree robbery merges with first degree felony murder); *see generally Freeman*, 153 Wn.2d at 772-73 (defining concept of merger).

Shawn Francis did not intend to kill Jason Lucas, and the State has never claimed as much. Rather, Francis was charged with felony murder in the first degree because he caused the death of Jason Lucas "while committing or attempting to commit the crime of robbery in the first degree." Exhibit D, at 1; RCW 9A.32.030(1)(c). In his guilty plea form, Francis admitted that he "struck Jason Lucas with a bat while attempting to rob Jason." Exhibit A, at 4. There is no evidence that the crimes of felony murder and attempted robbery as committed here had any "independent purpose or effect" such that convictions for both crimes would not violate double jeopardy.

The State may contend that the attempted robbery charged in count III is somehow different from the attempted robbery charged as the predicate crime in count I; i.e., that Mr.

Francis committed more than one attempted robbery on the night of the incident. This argument is foreclosed, however, by the Washington Supreme Court's decision in *State v. Tvedt,* 153 Wn.2d 705, 107 P.3d 728 (2005). In *Tvedt*, the Court clarified the unit of prosecution for the crime of robbery, holding that a "single taking [of property] can result in a conviction on one count of robbery, *regardless of the number of persons present.*" *Tvedt*, 153 Wn.2d at 708 (emphasis supplied). The Court specifically rejected the notion that the number of counts of robbery may be increased based upon the number of people "who have authority or control over the property who are present during the taking." *Tvedt*, 153 Wn.2d at 714-16.

Here, despite the fact that both Lucas and Jacobsen were present, under *Tvedt* there was only one attempted robbery—the

attempted taking of money jointly controlled by Lucas and Jacobsen, "money Jason and D'Ann had recently gotten from her parents." Exhibit D, at 4; *see also* Exhibit C, at 1. Because there was only one attempted robbery, that crime necessarily served as the predicate crime for the first degree felony murder charged in count I. Francis's conviction for the attempted first degree robbery charged in count III thus violates double jeopardy.

4. The Appropriate Remedy for the Double Jeopardy Violations Is Withdrawal of the Entire Guilty Plea, or, Alternatively, Vacation of the Convictions in Counts II and III and Resentencing on Count I.

In January, 2008, the Washington Supreme Court announced that "vacating a conviction is the proper remedy when the conviction violates double jeopardy, even when entered pursuant to an indivisible plea agreement." *Knight*, 174

P.3d at 1169. "A plea agreement is indivisible, and its terms must be enforced as a whole where 'a defendant pleads guilty to multiple counts or charges at the same time, in the same proceedings, and in the same document.'" *Knight*, 174 P.3d at 1171, quoting *State v. Turley*, 149 Wn.2d 395, 402, 69 P.3d 338 (2003). While the Court's ostensibly broad holding would seem to dictate the remedy here, the Court in *Knight* placed great emphasis on the fact that "Knight does not seek to withdraw her guilty pleas." *Knight*, 174 P.3d at 1171. "*Since Knight does not seek to withdraw her plea* nor does the double jeopardy clause require withdrawal of the plea, *Turley* is inapposite here." *Knight*, 174 P.3d at 1171 (emphasis supplied).

Moreover, the *Knight* holding arguably conflicts with a seemingly contrary conclusion reached by the Court in the

earlier case of *In Re Shale*, 160 Wn.2d 489, 158 P.3d 588 (2007). Shale pled guilty to twelve separate crimes charged under seven cause numbers as part of what the Court termed an "indivisible package deal." Shale later argued that some—but not all—of the convictions violated double jeopardy. He did not seek to withdraw his guilty pleas. *Shale*, 160 Wn.2d at 492-94. In affirming the Court of Appeals dismissal of Shale's personal restraint petition, the Supreme Court cryptically concluded, "[W]e find Shale is challenging only a portion of an indivisible package deal. Therefore, we find Shale cannot challenge a portion of the plea agreement." *Shale*, 160 Wn.2d at 494. The Court did not address the merits of Shale's double jeopardy claims.

There is no question that the guilty pleas entered in this

case by Mr. Francis are part of an indivisible plea agreement. To the extent that the confusing decision in *Shale* rests on the theory—unstated by the Court in its decision—that Shale waived his right to relief by not requesting withdrawal of the entire plea agreement, Mr. Francis wishes to make it clear to this Court that the relief he seeks is withdrawal of the entire indivisible plea agreement entered in this case. If the Court, however, determines that vacating the plea is not the proper remedy, then Mr. Francis requests in the alternative that the Court vacate the convictions in counts II and III and remand for resentencing on count I.

F. CONCLUSION

For the foregoing reasons, this Court should grant Mr. Francis's petition.

DATED this 26th day of February, 2008.

Respectfully submitted,

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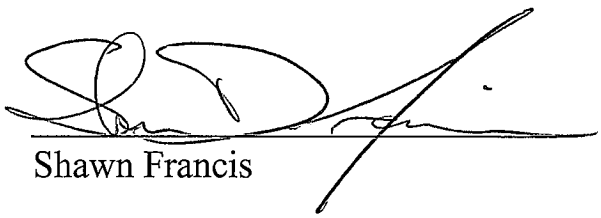
VERIFICATION BY PETITIONER

I, Shawn Francis, declare that I have received a copy of the attached petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this 1st day of February, 2008.



Shawn Francis

EXHIBIT A:

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

SHAWN D. FRANCIS,

Defendant.

NO. 95-1-05023-1

STATEMENT OF DEFENDANT ON PLEA OF GUILTY

PN _____

APR 10 1996

1. My true name is SHAWN D. FRANCIS.

2. My age is 18.

3. I went through the 11 grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
I have the right to be represented by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Michael Danko.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy trial and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.

(f) The right to appeal a determination of guilt after a trial.

6. I am charged with the following:

Count I MURDER IN THE FIRST DEGREE

Elements: Did strike and cause the death of Jason Lucas while attemoting to commit the crime of Robbery in the First Degree on November 4, 1995 in the State of Washington. That Jason Lucas was not a participant in the said crime of Attempted Robbery in the First Degree. Jason Lucas died 11/8/95

Maximum Penalty LIFE; $50,000 Standard Range 261-347 months

Count III Attempted Robbery In The First Degree - On 11/4/95 in State of WA.

Elements: Did peform a substantial step toward the taking of personal property with intent to steal from the ~~presence~~ person of or in the presence of D'Ann Jacobsen, against D'Ann Jacobsens will by use of force, violence or fear and in the commission of the offense did inflict bodily injury on D'Ann Jacobsen

Maximum Penalty 10yrs; $20,000 Standard Range 30.75 - 40.5 months

Count II

Elements: Assault in the Second Degree - did assault D'Ann Jacobsen with a deadly weapon, to wit: a baseball bat, on 11/4/95, in the State of Washington.

Maximum Penalty 10yrs; $20,000 Standard Range 12+ - 14 months

7. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The standard sentencing range is based on the crime I am pleading guilty to and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes juvenile court convictions as follows: convictions for sex offenses, any class A juvenile felony only if I was 15 or older at the time the juvenile offense was committed, any class B and C juvenile felony convictions only if I was 15 or older at the time the juvenile offense was committed and I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(b) The prosecuting attorney's statement of my criminal history for sentencing is as follows:

Residential Burglary (2x) - Juvenile offense - Violation 1/20/95
Sentenced 10/6/95

Unless I attach a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced I am obligated to tell the sentencing judge about those convictions.

(c) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this crime is binding on me. I cannot change my mind even if additional criminal history is discovered and even though the standard sentencing range and the prosecuting attorney's recommendation increase.

(d) In addition to sentencing me to confinement within the standard range, the judge will order me to pay $100 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration up to $50 per day. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(e) The prosecuting attorney will make the following recommendations to the judge:

Ct 1: 347 months Ct 2: 14 months, Ct 3: 40.5 months
Call concurrent)
$100 Crime Victim Compensation
$110 Court Costs
Restitution
2yrs. community placement (Count I) with conditions.
DNA testing.

[ ] The prosecuting attorney will make the recommendations set forth in the plea agreement which is incorporated herein by reference.

(f) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard sentencing range unless the judge finds substantial and compelling reasons not to do so. If the judge goes above or below the standard sentence range, either I or the State can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence.

(g) I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

8. IF ANY OF THE FOLLOWING BOXED PARAGRAPHS DO NOT APPLY THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

(a) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training, and to maintain law abiding behavior.	S.F.
(b) I am being sentenced for two or more violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.	S.F.
(c) The crime of Murder in the First Degree has a mandatory minimum sentence of at least 20 years of total confinement. The law does not allow any reduction of this sentence.	

(d)	This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge	S.F.
(e)	In addition to confinement, the judge will sentence me to community placement for at least one year. During the period of community placement I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities.	
(f)	Because this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.	
(g)	Because this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.	S.F.
(h)	Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release. If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and notify the sheriff of the county where I last registered, both within 10 days of establishing my new residence.	S.F.

9. I plead guilty to the crime(s) of Murder in the First Degree; Attempted Robbery 1°; Assault 2° as charged in the Amended information. I have received a copy of the information.

10. I make this plea freely and voluntarily.

11. No one has threatened any harm to me or to any other person to cause me to enter this plea.

12. No person has made any promises of any kind to cause me to enter this plea except as set forth in this statement.

13. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

In ~~XXXXXXXXXXXXXX~~ Pierce County WA on Nov. 4, 1995 I struck Jason Lucas with a bat while attempting to rob Jason. When he didn't fall down, I struck him again. D'Ann Jacobsen was with him and when she screamed I swung the bat at her and hit her, causing her substantial injury. I acknowledge my actions constitute a substantial step toward robbing her and Jason. Quinn Spaulding convinced me to drive him out to Jason's so that he could rob him of the money Jason & D'ann had recently gotten from her parents. When Jason came home, Quinn threatened to kill me if I didn't attack Jason. I know that Jason died as a result of my striking him. I am very sorry for what I did and wish I would have confronted Quinn instead.

14. Pursuant to RCW 10.73.090 and 10.73.100, I understand that my right to file any kind of post sentence challenge to the conviction or the sentence may be limited to one year.
15. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the judge.

Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands this statement.

Attorney for Defendant 14312

Deputy Prosecuting Attorney 14754

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that:

[ ] (a) The defendant had previously read; or

[ ] (b) The defendant's lawyer had previously read to him or her; or

[ ] (c) An interpreter had previously read the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED: 4-10-96

FILED
DEPT. 1A
IN OPEN COURT
APR 10 1996
Pierce County Clerk
By DEPUTY

Judge
BRUCE W. COHOE

*I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19____.

Interpreter

5

EXHIBIT B:

JUDGMENT AND SENTENCE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. SHAWN DOMINIQUE FRANCIS, Defendant. DOB: 9-19-77 SID NO.: WA17745851 LOCAL ID:	CAUSE NO. 95-1-05023-1 JUDGMENT AND SENTENCE (FELONY) MAY 30 1996

FILED
DEPT. 14
IN OPEN COURT
MAY 30 1996
Pierce County Clerk
By ..... DEPUTY

I. HEARING

1.1 A sentencing hearing in this case was held on 5-30-96.

1.2 The defendant, the defendant's lawyer, MICHAEL DANKO, and the deputy prosecuting attorneys, EDMUND MURPHY AND KEVIN BENTON, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1. CURRENT OFFENSES(S): The defendant was found guilty on April 10, 1996, by

[X] plea [ ] jury-verdict [ ] bench trial of:

Count No.: I
Crime: MURDER IN THE FIRST DEGREE, Charge Code: (D3)
RCW: 9A.32.030(1)(c)
Date of Crime: November 4, 1995
Incident No.: Puyallup PD 95-7739

Count No.: II
Crime: ASSAULT IN THE SECOND DEGREE, Charge Code: (E28)
RCW: 9A.36.021(1)(c)
Date of Crime: November 4, 1995

ENTERED
JUDGEMENT

96-9-04586-2

e of Prosecuting Attorney
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Incident No.: Puyallup PD 95-7739

Count No.: III
Crime: ATTEMPTED ROBBERY IN THE FIRST DEGREE, Charge Code: (AAA4)
RCW: 9A.56.190, 9A.56.200(1)(c), and 9A.28.020
Date of Crime: November 4, 1995
Incident No.: Puyallup PD 95-7739

[ ] Additional current offenses are attached in Appendix 2.1.
[ ] A special verdict/finding for use of deadly weapon was returned on Count(s).
[ ] A special verdict/finding of sexual motivation was returned on Count(s).
[ ] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

[X] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):
COUNT II: ASSAULT IN THE SECOND DEGREE, AND COUNT III: ATTEMPTED ROBBERY IN THE FIRST DEGREE

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
RES. BURGLARY (X2)	10-6-95	JUVENILE	1-20-95	NV

[ ] Additional criminal history is attached in Appendix 2.2.
[ ] Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

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	Offender Score	Seriousness Level	Range Months	Maximum Years
Count No. I:	2	XIV	261-347	LIFE
Count No. II:	2	IV	12+ - 14	TEN
Count No. III:	2	IX	30.75-40.5	TEN

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

[ ] Substantial and compelling reasons exist which justify a sentence [ ] above [ ] below the standard range for Count(s)___. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 RECOMMENDED AGREEMENTS:

[X] For violent offenses, serious violent offenses, most serious offenses, or any felony with a deadly weapon special verdict under RCW 9.94A.125; any felony with any deadly weapon enhancements under RCW 9.94A.310(3) or (4) or both; and/or felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun, the recommended sentencing agreements or plea agreements are [ ] attached [X] as follows:

COUNT I: 347 MONTHS IN DOC; COUNT II: 14 MONTHS IN DOC; COUNT III: 40.5 MONTHS IN DOC; ALL CONCURRENT

2.6 RESTITUTION:

[ ] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
[X] Restitution should be ordered. ~~A hearing is set for~~ _____.
[ ] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.

2.7 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS: The court has considered the defendant's past, present and future ability to pay

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legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability to pay:

[ ] no legal financial obligations.
[X] the following legal financial obligations:

[X] crime victim's compensation fees.
[ ] court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
[ ] county or interlocal drug funds.
[ ] court appointed attorney's fees and cost of defense.
[ ] fines.
[ ] other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

THE FINANCIAL OBLIGATIONS IMPOSED IN THIS JUDGMENT SHALL BEAR INTEREST FROM THE DATE OF THE JUDGMENT UNTIL PAYMENT IN FULL, AT THE RATE APPLICABLE TO CIVIL JUDGMENTS. RCW 10.82.090. AN AWARD OF COSTS ON APPEAL AGAINST THE DEFENDANT MAY BE ADDED TO THE TOTAL LEGAL FINANCIAL OBLIGATIONS. RCW 10.73.

2.8 SPECIAL FINDINGS PURSUANT TO RCW 9.94A.120:

[ ] The defendant is a first time offender (RCW 9.94A.030(20)) who shall be sentenced under the waiver of the presumptive sentence range pursuant to RCW 9.94A.120(5).
[ ] The defendant is a sex offender who is eligible for the special sentencing alternative under RCW 9.94A.120(7)(a). The court has determined, pursuant to RCW 9.94A.120(7)(a)(ii), that the special sex offender sentencing alternative is appropriate.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The court DISMISSES.

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IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

$60,542.04, Restitution, to be paid as follows:

① $918.36 to Dael and Lori Lucas; P.O. Box 446; Roosevelt, WA 98851

② $1,127.00 to Crime Victim Comp.; P.O. Box 44520; Olympia, WA 98504 Re: VH29830, Lucas J.

③ $58,496.68 to Benefit Administrators of New England P.O. Box 557; Rockland, MA 02370 Re: 533-52-7465

$_____, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

$100.00, Victim assessment;

$_____, Fine; [ ] VUCSA additional fine waived due to indigency (RCW 69.50.430);

$_____, Fees for court appointed attorney;

$_____, Washington State Patrol Crime Lab costs;

$_____, Drug enforcement fund of _____;

$_____, Other costs for: _____;

$60,642.04, TOTAL legal financial obligations ☒ including restitution [ ] not including restitution.

Payments shall not be less than $_____ per month. Payments shall commence on _____. To be set by CCO

☒ Restitution ordered above shall be paid jointly and severally with:

Name	Cause Number
Quinn Lafond Spaulding	95-1-05063-0

The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement to assure payment of the above monetary obligations.

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Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release or by _____.

[ ] Bond is hereby exonerated.

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4.2 CONFINEMENT OVER ONE YEAR: The court imposes the following sentence:

(a) CONFINEMENT: Defendant is sentenced to following term of total confinement in the custody of the Department of Corrections commencing Immediately.

347 months on Count No. I ☒ concurrent [ ] consecutive
14 months on Count No. II ☒ concurrent [ ] consecutive
40½ months on Count No. III ☒ concurrent [ ] consecutive

☒ Actual number of months of total confinement ordered is: 347

[ ] This sentence shall be [ ] concurrent [ ] consecutive with the sentence in _____;

☒ Credit is given for 205 days served;

(b) ☒ COMMUNITY PLACEMENT (RCW 9.94A.120(9)(b)). The defendant is sentenced to community placement for [ ] one year ☒ two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer. The offender shall comply with the following terms of community placement:

WHILE ON COMMUNITY PLACEMENT OR COMMUNITY CUSTODY, THE DEFENDANT SHALL: 1) REPORT TO AND BE AVAILABLE FOR CONTACT WITH THE ASSIGNED COMMUNITY CORRECTIONS OFFICER AS DIRECTED; 2) WORK AT DEPARTMENT OF CORRECTIONS-APPROVED EDUCATION, EMPLOYMENT AND/OR COMMUNITY SERVICE; 3) NOT CONSUME CONTROLLED SUBSTANCES EXCEPT PURSUANT TO LAWFULLY ISSUED PRESCRIPTIONS; 4) NOT UNLAWFULLY POSSESS CONTROLLED SUBSTANCES WHILE IN COMMUNITY CUSTODY; 5) PAY SUPERVISION FEES AS DETERMINED BY THE DEPARTMENT OF CORRECTIONS; 6) RESIDENCE LOCATION AND LIVING ARRANGEMENTS ARE SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF CORRECTIONS DURING THE PERIOD OF COMMUNITY PLACEMENT; 7) DO NOT OWN, USE OR POSSESS FIREARMS OR AMMUNITION.

(a) [ ] The offender shall not consume any alcohol;

(b) ☒ The offender shall have no contact with: D'Ann Jacobsen or the immediate family of Jason Lucas

(c) [ ] The offender shall remain [ ] within or [ ] outside of a specified geographical boundary, to-wit: _____

(d) [ ] The offender shall participate in the following crime related treatment or counseling services: _____

(e) [ ] The defendant shall comply with the following crime-related prohibitions: _____

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(f) ☒ OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS: Provide urine samples or breath samples for testing, as directed by the assigned Community Corrections officer

(g) [ ] HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)

(h) ☒ DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754)

[ ] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: 5-30-96

FILED
DEPT. 14
IN OPEN COURT
MAY 30 1996
Pierce County Clerk
By DEPUTY

JUDGE BRUCE W. COHOE

Presented by:

Deputy Prosecuting Attorney
WSB # 14754

Approved as to form:

Lawyer for Defendant
WSB # 14312

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Telephone: 591-7400

FINGERPRINTS

Right Hand
Fingerprint(s) of: SHAWN DOMINIQUE FRANCIS, Cause #95-1-05023-1

Attested by: Ted Rutt CLERK
By: DEPUTY CLERK Pamela J Smith Date: 5/30/96

CERTIFICATE

I, _____
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

_____
CLERK

By: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

State I.D. #WA17745851

Date of Birth 9-19-77

Sex MALE

Race WHITE

ORI _____

OCA _____

OIN _____

DOA _____

FILED
DEPT. 14
IN OPEN COURT
MAY 30 1996
Pierce County Clerk
By _____ DEPUTY

FINGERPRINTS

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EXHIBIT C:

SUPPLEMENTAL DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

NO. 95-1-05023-1

SUPPLEMENTAL DECLARATION FOR DETERMINATION

OF PROBABLE CAUSE

STATE OF WASHINGTON)
)ss
County of Pierce)

Steve Merrival, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the Puyallup Police Department, case number 95-077329;

That the police report and/or investigation provided me the following information:

That in Pierce County, Washington, on or about the 4th day of November, 1995, the defendant, Sean Francis, did have knowledge that Jason Lucas and D'Ann Jacobsen had 2000 dollars. Francis laid in wait in the dark with Quinn Laford Spaulding at Francis' residence at 407 Valley Avenue, Apt M107, Puyallup. When Jason and Jacobsen returned, Francis and Spaulding attacked them with baseball bats. Francis had intended to knock Lucas out and take the money. When they failed to render Lucas unconscious, Francis was repeatedly struck. Lucas was taken to the intensive care unit at Mary Bridge Hospital and placed on life support. He was brain dead and not expected to live. Jacobsen received numerous bruises to the face, head, arms and hands. The suspects fled when a witness appeared without gaining control of the money. Francis admitted to police that he and the other subject assaulted Lucas and Jacobsen. Jacobsen told police that the suspects wear wearing ski masks at the time of the assault.

Jason Lucas died on November 8, 1995, as a result of injuries received in the assault. Later that day, police questioned Quinn Spaulding who told them that Francis contacted him on the 4th and said that he wanted to go to Puyallup and take Lucas' money away from him. Quinn told Francis that he wanted to go with him, and Francis drove them to the apartment complex where they waited for Lucas and Jacobsen to return home for a long time. While driving, Sean said he was just going to hit him in the head, grab the money, and they were going to bail. They hid in some bushes until Lucas and Jacobsen arrived. Quinn saw Francis leave the bushes with a bat and his ski mask down. Quinn also claimed that he was still hiding in the bushes when the assault took place. Quinn left the bushes, observed Sean strike Jason, nudged Sean to tell him to go, and fled with Sean following.

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Sean Francis is 5'9" tall and weighs 145 pounds. Quinn Spaulding is shorter and heavier set. D'Ann Jacobsen told police that both of the suspects had baseball bats. Jacobsen also said the person that hit her was probably around 5'8", and the one that hit Jason was probably a little bit smaller.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: November 13, 1995.
PLACE: TACOMA, WASHINGTON

Steve Merrival, WSB# 11908

sm

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EXHIBIT D:

SECOND AMENDED INFORMATION AND
PROSECUTOR'S STATEMENT
RE: SECOND AMENDED INFORMATION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. SHAWN DOMINIQUE FRANCIS, Defendant.	CAUSE NO. 95-1-05023-1 SECOND AMENDED INFORMATION APR 10 1996

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse SHAWN DOMINIQUE FRANCIS of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That SHAWN DOMINIQUE FRANCIS, in Pierce County, Washington, on or about the 4th day of November, 1995, did unlawfully and feloniously while committing or attempting to commit the crime of Robbery in the First Degree, and in the course of and furtherance of said crime or in immediate flight therefrom, Shawn Dominique Francis struck Jason Lucas, a human being, not a participant in such crime, in the head with a baseball bat, thereby causing the death of Jason Lucas, on or about the 8th day of November, 1995, contrary to RCW 9A.32.030(1)(c), and against the peace and dignity of the State of Washington.

ORIGINAL

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COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse SHAWN DOMINIQUE FRANCIS of the crime of ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That SHAWN DOMINIQUE FRANCIS, in Pierce County, Washington, on or about the 4th day of November, 1995, did unlawfully and feloniously assault D'Ann Jacobsen with a deadly weapon, to-wit: a baseball bat, contrary to RCW 9A.36.021(1)(c), and against the peace and dignity of the State of Washington.

COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse SHAWN DOMINIQUE FRANCIS of the crime of ATTEMPTED ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That SHAWN DOMINIQUE FRANCIS, in Pierce County, Washington, on or about the 4th day of November, 1995, did unlawfully and feloniously intend to commit the crime of Robbery in the First Degree and performed an act which was a substantial step toward the taking of personal property with intent to steal from the person or in the presence of D'Ann Jacobsen, against such person's will by use or

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threatened use of immediate force, violence, or fear of injury to D'Ann Jacobsen, and in the commission thereof, or in immediate flight therefrom Shawn Dominique Francis inflicted bodily injury upon D'Ann Jacobsen, contrary to RCW 9A.56.190, 9A.56.200(1)(c), and 9A.28.020, and against the peace and dignity of the State of Washington.

DATED this 10th day of April, 1996.

JOHN W. LADENBURG
Prosecuting Attorney in and for
said County and State.

By: _____
EDMUND MURPHY
Deputy Prosecuting Attorney
WSB #14754

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Tacoma, Washington 98402-2171
Main Office: (206) 591-7400

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

SHAWN DOMINIQUE FRANCIS,

Defendant.

NO. 95-1-05023-1

APR 10 1996

PROSECUTOR'S STATEMENT
RE: SECOND AMENDED INFORMATION

The State requests the Court consider accepting a plea to the filing of a second amended information pursuant to RCW 9.94A.090 for the following reasons: The charges in the proposed second amended information are the charges that the State realistically believes would be proven at trial.

The proposed second amended information changes the Assault in the First Degree against victim D'Ann Jacobsen to Assault in the Second Degree. In order to convict the defendant of Assault in the First Degree, the State would have to show that he assaulted D'Ann Jacobsen with the intent to inflict great bodily harm. The evidence would most likely show that he assaulted her with the hope of knocking her unconscious so that he could take the victims' money. That does not rise to the level of an intent to inflict great bodily harm.

The proposed second amended information also drops the one count of Attempted Robbery in the First Degree involving victim

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Jason Lucas. The murder charge is Murder in the First Degree because it occurred during the commission of an Attempted Robbery in the First Degree. Under RCW 9.94A.400(1)(a), the charge of Attempted Robbery in the First Degree would be treated as the "same criminal conduct" as the charge of Murder in the First Degree, and would, therefore, not affect the sentencing range of any of the charges.

DATE: April 10, 1996.

EDMUND MURPHY
Deputy Prosecuting Attorney
WSB #14754

Office of Prosecuting Attorney
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Telephone: 591-7400